



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III

841 Chestnut Building  
Philadelphia, Pennsylvania 19107

7950  
SEP 30 1988

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Frank Murphy, Director of Research  
Dixon Wearever, Inc.  
Route 61  
Deer Lake, PA 17961-0280

Re: Dixon Wearever §3008(h) Consent Order  
Docket No. RCRA-III-015-CA

Dear Mr. Murphy:

Enclosed please find a True and Correct copy of the Dixon Wearever RCRA 3008(h) Corrective Action Consent Order. Pursuant to Section XXIV of the Order, the Order is effective upon your receipt of the same.

The Agency and I appreciate all of your efforts and cooperation in resolving this matter. If you have any questions or if I can be of further assistance, I may be contacted at (215)-597-3186.

Sincerely,

A handwritten signature in cursive script that reads "Neil R. Swanson".

Neil R. Swanson, Assistant Branch Chief  
Hazardous Waste Enforcement Branch

Enclosure

cc: Steve Engelmyer, Esq.  
Denise Parkinson (3RC22)  
Humane Zia (3HW11)  
Leon Kuchinski (PADER)  
Dale Williams (PADER)

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III

IN THE MATTER OF:	)	
	)	ADMINISTRATIVE ORDER ON CONSENT
Dixon Wearever, Inc.	)	
	)	U.S. EPA Docket No.
Route 61	)	RCRA-III-015-CA
West Brunswick Township	)	
Schuylkill County, PA	)	
	)	
PAD 04 125 0242	)	
	)	Proceeding under Section
	)	3008(h) of the Resource
	)	Conservation and Recovery
RESPONDENT	)	Act, as amended, 42 U.S.C.
	)	§6928(h).

I. JURISDICTION

This Administrative Order on Consent ("Consent Order") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 3008(h) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §6928(h). The authority vested in the Administrator has been delegated to the Regional Administrators by EPA Delegation Nos. 8-31 and 8-32 dated March 6, 1986.

On January 30, 1986, the EPA granted the Commonwealth of Pennsylvania (the "State") final authorization to operate a hazardous waste program under RCRA Subtitle C, in lieu of EPA, pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926. The State, however, does not have authority to enforce RCRA § 3008(h). However, representatives of the State have had the opportunity to review the contents of this Consent Order.

This Consent Order is issued to Dixon Wearever, Inc. ("Respondent"), the owner/operator of Dixon Wearever, Inc. located in West Brunswick Township, Schuylkill County, Pennsylvania ("Facility"). Respondent consents to and agrees not to contest EPA's jurisdiction to issue this Consent Order and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction to: compel compliance with this Order in any subsequent enforcement proceedings, either administrative or judicial; require Respondent's full or interim compliance with the terms of this Consent Order; or impose sanctions for violations of this Consent Order.

Respondent does not admit any of the factual or legal determinations made by EPA as set forth herein and reserves all rights and defenses it may have regarding the Dixon site. This Consent Order shall not constitute or be deemed to be an admission or evidence of liability or responsibility by Dixon Wearever with respect to the Dixon Wearever site.

## II. PARTIES BOUND

1. This Consent Order shall apply to and be binding upon Respondent and its officers, directors, employees, agents, successors and assigns, in their official capacity and upon all persons, independent contractors, contractors, and consultants acting under or for Respondent.

2. No change in ownership or corporate or partnership status relating to the Facility will in any way alter Respondent's responsibility under this Consent Order.

3. Respondent shall provide a copy of this Consent Order to all contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Consent Order within one (1) week of the effective date of this Consent Order or date of such retention, whichever is later, and shall condition all such contracts on compliance with the terms of this Consent Order.

4. Respondent shall give notice of this Consent Order to any successor in interest prior to transfer of ownership or operation of the Facility and shall notify EPA at least 14 calendar days prior to such transfer.

## III. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of EPA and Dixon Wearever, Inc. are: (1) to perform the appropriate and applicable Interim Measures ("IM") as

determined by EPA pursuant to the terms of this Consent Order; (2) to perform a RCRA Facility Investigation ("RFI") to determine fully the nature and extent of any release of hazardous waste or hazardous constituents at or from the Facility; and (3) to perform a Corrective Measure Study ("CMS") to identify and evaluate alternatives for the corrective action necessary to prevent or mitigate any migration or releases of hazardous wastes or hazardous constituents at or from the Facility.

#### IV. FINDINGS OF FACT

1. Respondent is a corporation doing business in the Commonwealth of Pennsylvania and is a person as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 25 PA Code § 75.260(a).
2. Respondent is an owner and operator of a hazardous waste management facility ("Facility") located on Route 61 in West Brunswick Township, Schuylkill County, Pennsylvania. The Facility manufactures assorted writing instruments.
3. From August 1967 to December 31, 1986, prior to Respondent's ownership, the Facility was owned and operated by David Kahn, Inc. ("DKI").
4. DKI owned and operated the Facility as a hazardous waste management facility on and after November 19, 1980, the applicable date which renders facilities subject to interim status requirements or the requirement to have a permit under §§ 3004 and 3005 of RCRA, 42 U.S.C. §§ 6924 and 6925.
5. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, DKI notified EPA of its hazardous waste activity. In its notification dated June 6, 1980, DKI identified itself as a generator of hazardous waste, and an owner and operator of a hazardous waste treatment, storage, and disposal facility.
6. In its notification referenced in paragraph 5., DKI identified itself as handling the following hazardous wastes at the Facility:
  - a) F006 - Wastewater treatment sludges from electroplating operations.
  - b) F007 - Spent cyanide plating bath solutions from electroplating operations.

- c) F008 - Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used.
- d) ~~F009~~ - Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.
- e) P030 - Cyanides.
- f) P074 - Nickle cyanide.
- g) P098 - Potassium cyanide.

7. On August 28, 1980, DKI submitted a Part A Permit Application for hazardous waste storage and treatment in tanks, and hazardous waste disposal in surface impoundments.

8. On August 6, 1981, EPA acknowledged the Facility's interim status in a letter to DKI.

9. On August 1, 1984, DKI submitted a revised Part A Permit Application for hazardous waste storage in containers, hazardous waste storage in tanks, and hazardous waste storage in surface impoundments. The hazardous waste being handled included:

- a) F001 - Spent halogenated solvents used in degreasing.
- b) F006 - Wastewater treatment sludges from electroplating operations.
- c) K086 - Washes and sludges from cleaning equipment used in the formulation of ink.

10. On February 12, 1987, Respondent submitted a revised notification form advising EPA that it was the new owner and operator of the Facility under the name of Dixon Wearever, Inc.

11. The Facility is subject to interim status requirements under Sections 3004 and 3005 of RCRA, 42 U.S.C. §§ 6924 and 6925.

12. On March 15, 1985, EPA sent a letter to DKI requesting information regarding the Solid Waste Management Units (SWMUs) at the Facility pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

13. On August 1, 1985, DKI submitted a letter to EPA which identified and discussed the SWMUs at the Facility.

14. The Facility includes (see site map attached):

- A) Two disposal surface impoundments that have been closed in accordance with a State approved closure plan. Certification of the completed closure was submitted on November 12, 1985. DKI operated these two impoundments to store and evaporate wastewater treatment sludges from the plant's chrome plating system (F006, F007, F008, and F009), waste solvents and solvent washes from the ink formulation department (K086), and silkscreen solvent washes.
- B) Four underground storage tanks are located in a small building behind the main building. The tanks each have a capacity of 3,000 gallons and are fiberglass lined concrete pits with steel covers. Only two of the tanks are currently in operation both of which are used for accumulating ink washes (K086). Until 1981 these tanks also received chrome plating washes (F006) and solvent washwaters (F001).
- C) The ink waste accumulation pit is located in the ink department immediately east of the tank building. The pit is concrete and measures two feet by three feet and is two feet deep. Waste from the ink department is collected in this pit from the in-floor collection troughs. From the pit the waste is routed to one of the storage tanks mentioned in paragraph B above.
- D) The wastewater treatment plant is an extended aeration package plant of steel construction designed to handle 21,000 gallons of domestic sewage per day. The unit is located between the main building and Route 61 northeast of the wastewater effluent lagoon.
- E) The wastewater effluent lagoon is roughly rectangular in shape and it measures 216 feet by 72 feet and is 5 feet deep. The wastewater effluent lagoon is no longer used. The water from the treatment plant was diverted away in 1986. Prior to 1981, supernatant from the plating treatment tanks (F006) and oil filtration unit went into the lagoon. Respondent contends that K086 waste or its supernatant never went to the wastewater lagoon. The lagoon served as a final settling and aeration basin for the effluent before being discharged through a National Pollutant Discharge Elimination System (NPDES) outfall to Pine Creek.

- F) The drum storage yard consists of an asphalt base surrounded by a chain link fence. The area is approximately 60 feet by 60 feet. Empty product drums are stored in this area.
- G) The oil filtration unit is a 20 feet by 8 feet concrete inground pit. The depth varies between 6 feet to 15 feet. The oil filtration unit is no longer used for oil filtration in that the operations that generated the oil have been discontinued. Cooling water for the tubing, extruder and the heat exchange water for the chiller passes through this unit.
- H) An abandoned trash dump is located approximately 1,000 feet southwest of the main plant building. DKI acquired the dump from the previous landowner. It is now largely covered with dirt. The Respondent contends that the unit contains household trash.
- I) A building material dump is located southwest of the main plant building. Building materials from the original plant construction were disposed of at this location.
- J) The Respondent places waste oil from the pen tip finishing operations into an underground fuel tank (capacity not known). Five-gallon buckets of waste oil are emptied daily into this tank. During a RCRA Facility Assessment ("RFA") conducted by EPA in July 1987, stained soils were observed at this location. Fuel from this tank is used to fire the on-site boilers.
- K) A cleared area is located in the northwest corner of the plant property. This area has been identified from the review of historical overflights and it is unknown if any waste materials are associated with this location. Respondent contends that this cleared area is a result of excavation conducted to provide fill material for closing out the evaporating lagoons.

#### Impoundment Overflow

15. During a compliance evaluation inspection conducted by the Pennsylvania Department of Environmental Resources ("PADER") on August 7, 1984, it was discovered that one of the two disposal impoundments had overflowed, causing a release to nearby soils.

Production Well Contamination

16. On February 7, 1984, EPA notified DKI that the plant production well which is also used for drinking water had been found to be contaminated with volatile organic chemicals. EPA recommended that the water not be used for drinking purposes. The contaminants found in the production well were as follows:

- a) Trichloroethylene - 13 ppb
- b) Methylene Chloride - 3.1 ppb
- c) 1,1,1-dichloroethane - 17.3 ppb
- d) Toluene - 1.0 ppb

17. On February 10, 1984, DKI notified EPA that it was aerating the water from the above-described well pursuant to the instructions contained in EPA's notification letter of February 7, 1984. On August 17, 1984, DKI informed EPA in a letter that carbon filters had been installed on their drinking water fountains.

Offsite Contamination

18. On June 26 and 27, 1984, representatives of EPA conducted an inspection of the Facility. At that time samples were taken for analysis. The table below summarizes the sampling locations and corresponding results.

<u>Parameter (ppb)</u>	<u>Production Well</u>	<u>Residential Well</u>	<u>Impoundment #1 liquid</u>	<u>Impoundment #2 liquid</u>	<u>Impoundment #1 Sediment</u>
Benzene	--	--	1.2	2.1	--
Chloroethane	--	--	2.4	--	20
1,1-Dichloroethane	75*	<1	11	--	45
1,1-Dichloroethylene	12	<1	--	--	--
Ethylbenzene	--	--	<1	<1	6.6
Toluene	--	--	.6	--	--
1,1,1-Trichloroethane	40	15	1.9	--	40
Trichloroethylene	67*	--	3.5	--	110*

Key: -- Not Detected  
 \* Exceeds Drinking Water Standard

RCRA Ground Water Monitoring Results

19. A ground water monitoring system has been installed at the Facility. The monitoring system was designed to monitor releases from the two hazardous waste disposal surface impoundments. Well No. 4 is hydraulically upgradient of the impoundments. Well Nos. 1s, 2, 3, and 5 are hydraulically downgradient. The Facility production well has also been monitored as part of the program. Since their installation in June 1984, these wells have been monitored on a quarterly basis. This monitoring data indicates a release of hazardous waste or hazardous constituents from the Facility. A summary of the monitoring data follows:

A. Results of July 10, 1984 Sampling

<u>Parameters (ppb)</u>	<u>Well #4</u>	<u>Well #1s</u>	<u>Well #2</u>	<u>Well #3</u>	<u>Production Well</u>
Lead	8	262*	24	40	16
Trichloroethylene (TCE)	<5	<5	<5	13*	31.4*
1,1,1-Trichloroethane (1,1,1-TCA)	<5	<5	<.5	49	<5
1,1-Dichloroethane (1,1-DCA)	<5	129*	<5	<5	<5
1,2-Dichloroethylene (1,2-DCE)	8.01	<5	<5	6	<5

Key: \*Exceeds Drinking Water Standard

B. Results of October 18, 1984 Sampling

<u>Parameters (ppb)</u>	<u>Well #4</u>	<u>Well #1s</u>	<u>Well #2</u>	<u>Well #3</u>	<u>Production Well</u>
Lead	8	--	8	8	8
TCE	<.5	--	1.9	15*	32*
1,1,1-TCA	<1.0	--	<.5	89	<1.0
1,1-DCA	<1.0	--	34	10	33
1,2-DCE	NA	--	<1.0	1.0	1.0

C. Results of January 15, 1985 Sampling

<u>Parameters (ppb)</u>	<u>Well #4</u>	<u>Well #1s</u>	<u>Well #2</u>	<u>Well #3</u>	<u>Production Well</u>
Lead	38	61*	47	68*	15
TCE	<1	<1	2	25*	26*
1,1,1-TCA	<5	8	12	90	15
1,1-DCA	<1	19	41	19	27
1,2-DCE	NA	2	4	11	7

D. Results of April 29, 1985 Sampling

<u>Parameters (ppb)</u>	<u>Well #4</u>	<u>Well #1s</u>	<u>Well #2</u>	<u>Well #3</u>	<u>Production Well</u>
Lead	8	8	8	8	8
TCE	<1	4	2.5	18*	27*
1,1,1-TCA	<1	<1	<1	74	<1
1,1-DCA	<1	16	29	12	23
1,2-DCE	<1	<1	<1	<1	<1

E. Results of September 12, 1985 Sampling

<u>Parameters (ppb)</u>	<u>Well #4</u>	<u>Well #1s</u>	<u>Well #2</u>	<u>Well #3</u>	<u>Production Well</u>
Lead	33	--	27	53*	7
TCE	<.5	--	<.5	17*	29.8*
1,1,1-TCA	<.5	--	<.5	8.1	16.5
1,1-DCA	<.5	--	<.5	8.8	30.0
1,2-DCE	<.5	--	<.5	8.5	6.9

Key: -- Not Detected  
 NA Not Analyzed  
 \* Exceeds Drinking Water Standard

F. Results of January 9, 1986 Sampling

<u>Parameters (ppb)</u>	<u>Well #4</u>	<u>Well #1s</u>	<u>Well #2</u>	<u>Well #3</u>	<u>Well #5</u>	<u>Production Well</u>
TCE	<.5	<.5	<.5	1.6	<.5	1.8
1,1,1-TCA	<.5	2.7	<.5	2.6	1.5	1.7
1,1-DCA	<.5	3.3	<.5	<.5	<.5	<.5
1,2-DCE	1.2	13.8	10.8	2.8	2.7	8.6

G. Results of May 28, 1986 Sampling

<u>Parameters (ppb)</u>	<u>Well #4</u>	<u>Well #1s</u>	<u>Well #2</u>	<u>Well #3</u>	<u>Well #5</u>	<u>Production Well</u>
Lead	<7	20	<7	7	7	<7
TCE	<.5	1.1	2.6	16.5*	<.5	13*
1,1,1-TCA	<.5	<.5	<.5	142	16	7
1,1-DCA	<.5	13	7	6	<.5	9
1,2-DCE	<.5	3	4	7	<.9	2

H. Results of August 26, 1986 Sampling

<u>Parameters (ppb)</u>	<u>Well #4</u>	<u>Well #1s</u>	<u>Well #2</u>	<u>Well #3</u>	<u>Well #5</u>	<u>Production Well</u>
TCE	<.5	2	3	26*	.5	31*
1,1,1-TCA	<.5	<.5	<.5	99	8	15
1,1-DCA	<.5	26	5	10	.7	28
1,2-DCE	<.5	6	3	10	<.5	7

I. Results of November 18, 1986 Sampling

<u>Parameters (ppb)</u>	<u>Well #4</u>	<u>Well #1s</u>	<u>Well #2</u>	<u>Well #3</u>	<u>Well #5</u>	<u>Production Well</u>
TCE	<.5	1.11	5.26*	35*	1.5	53*
1,1,1-TCA	<.5	1.44	.83	117	21.3	24
1,1-DCA	<.5	6.6	8.84	9.4	1.26	38.2
1,2-DCE	<.5	<.5	<.5	<.5	<.5	<.5

Key: -- Not Detected  
 NA Not Analyzed  
 \* Exceeds Drinking Water Standard

J. Results of March 19, 1987 Sampling

<u>Parameters (ppb)</u>	<u>Well #4</u>	<u>Well #1s</u>	<u>Well #2</u>	<u>Well #3</u>	<u>Well #5</u>	<u>Production Well</u>
TCE	<.5	<.5	2.9	20*	1.2	44.3*
1,1,1-TCA	<.5	<.5	<.5	85	24	27.4
1,1-DCA	<.5	3.5	12.2	15.4	1.4	53
1,2-DCE	<.5	<.5	3.6	5.3	<.5	6.8

K. Results of September 15, 1987 Sampling

<u>Parameters (ppb)</u>	<u>Well #4</u>	<u>Well #1s</u>	<u>Well #2</u>	<u>Well #3</u>	<u>Well #5</u>	<u>Production Well</u>
TCE	<.5	<.5	.88	10.5*	<.5	15.2*
1,1,1-TCA	<.5	<.5	1.7	38.1	<.5	4.6
1,1-DCA	<.5	3.4	1.5	2.0	<.5	13.9
1,2-DCE	<.5	<.5	<.5	2.4	<.5	3.0

Key: -- Not Detected  
 NA Not Analyzed  
 \* Exceeds Drinking Water Standard

20. On July 7 and 8, 1987, representatives of EPA conducted an RFA at the Facility. During the RFA, various samples were collected. A summary of the pertinent sample (all samples listed are aqueous samples unless otherwise noted) analysis is listed below:

Results of July 7, 1987 RFA Samples

<u>Parameters (ppb)</u>	<u>W.W Effluent Lagoon (Sediment)</u>	<u>Oil Pit Water</u>	<u>Fuel Tank Storage Area (Soil)</u>	<u>Water Fountain (Duplicate)</u>	<u>Production Well</u>	
TCE	--	--	--	16	14	27
1,1,1-TCA	1,172	13	813,953	9	7	17
1,1-DCA	--	12	--	22	18	31

21. The information in paragraphs 15 to 20 confirms the release of hazardous waste or hazardous constituents from the Facility into the nearby soils and ground water.

22. The hazardous waste and/or hazardous constituents identified above may pose a threat to human health and/or the environment. EPA's data concerning these health threats may be found in the Administrative Record.

23. There are approximately 20 private drinking water sources and one restaurant's drinking water source which utilize ground water located within 1,000 feet of the Facility. The information summarized in paragraph 18 indicates that hazardous wastes or hazardous constituents from the Respondent's facility may have migrated to a private well and may migrate to other drinking water sources in the area.
24. The water from the Facility's production well was used as a source of drinking water at the Facility until February 20, 1988. The information summarized in paragraphs 16 to 20 indicates that hazardous wastes or hazardous constituents from the Facility have migrated in a fashion that threatens this drinking water source. As of February 22, 1988, bottled water is used as the sole source of drinking water at the Facility.
25. Releases of hazardous wastes or hazardous constituents from the Respondent's Facility may also contribute to the degradation of water quality in Pine Creek.

#### V. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set out above, and after consideration of the administrative record, the Regional Administrator of EPA Region III, has made the following conclusions of law and determinations:

1. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15);
2. Respondent is the owner or operator of a facility that has operated or is operating pursuant to § 3005(e) of RCRA, 42 U.S.C. § 6925(e).
3. Certain wastes and constituents thereof found at the Facility are hazardous wastes or hazardous constituents thereof as defined by § 1004(5) of RCRA, 42 U.S.C. § 6903(5). These are also hazardous wastes or hazardous constituents within the meaning of § 3001 of RCRA, 42 U.S.C. § 6921 and 40 C.F.R. Part 261.
4. There is or has been a release of hazardous wastes or hazardous constituents into the environment from Respondent's Facility.
5. The actions required by this Consent Order are necessary to protect human health and/or the environment.

## VI. WORK TO BE PERFORMED

EPA acknowledges that the Respondent may have completed some of the tasks required by this Consent Order and that the Respondent may have available some of the information and data required by this Consent Order. This previous work may be used to meet the requirements of this Consent Order, upon submission to and formal approval by EPA.

Pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), Respondent agrees to and is hereby ordered to perform the following acts in the manner and by the dates specified herein. All work undertaken pursuant to this Consent Order shall be performed in a manner consistent with, at a minimum: the Scope of Work for a RCRA Facility Investigation set forth in Attachment A to this Order which is incorporated herein by reference; the Scope of Work for a Corrective Measures Study set forth in Attachment B to this Order which is incorporated herein by reference; RCRA and its implementing regulations; and applicable EPA guidance documents. Relevant guidance may include, but is not limited to, the "RCRA Facility Investigation ("RFI") Guidance" (EPA 530/SW-87-001), "RCRA Ground Water Monitoring Technical Enforcement Guidance Document" (OSWER Directive 9950.1, September 1986), "Test Methods For Evaluating Solid Waste" (SW-846, November 1986), "Construction Quality Assurance for Hazardous Waste Land Disposal Facilities" (EPA 530/SW-86-031, July 1986), and "OWRS Guidance for Preparation of QA Project Plans" (OWRS-QA-1, May 1984).

### INTERIM MEASURES (IM)

1. The specified Interim Measures shall be implemented in accordance with, at a minimum, RCRA, its implementing regulations, and relevant EPA guidance documents. The Interim Measures to be undertaken by the Respondent at the Facility shall include the following actions:

- a. As of the effective date of this Consent Order, Respondent shall cease using ground water from the Production Well as a source of drinking water and shall provide to the Facility employees an alternative drinking water supply. Respondent and EPA agree that this interim measure has already been implemented;
- b. As of the date of its approval by PADER, implement the closure plan for the wastewater effluent lagoon. Respondent and EPA agree that this interim measure is being implemented;

- c. As of the effective date of this Consent Order, cease placing waste oils into the fuel oil storage tank until the integrity of the fuel oil storage tank is verified by an acceptable leak test. This test shall be conducted in conformance with the methods outlined in "Underground Storage Tank Corrective Action Technologies," EPA/625/6-87-015.
- 1) Within 30 calendar days of the effective date of this Consent Order, submit to EPA for approval a plan to conduct the above mentioned leak test;
  - 2) within 14 calendar days of receipt of EPA's comments on the leak test plan, Respondent shall submit to EPA for approval a revised plan which responds to and/or remedies any deficiencies in the plan; and
  - 3) within 30 calendar days of receipt of EPA approval of the leak test plan, conduct the EPA-approved leak test plan and submit a final report to EPA summarizing the findings which includes all data generated during the test.
- d. Within 2 weeks of the effective date of this Consent Order, Respondent shall submit information describing the waste oil at their Facility. After review of this data EPA shall determine whether Respondent should handle said waste oil in compliance with the requirements of 40 C.F.R. § 266, Subparts D or E and include a compliance schedule with such written determination.

#### RCRA FACILITY INVESTIGATION (RFI)

2. Within 90 calendar days of the effective date of this Consent Order, Respondent shall submit to EPA for approval a Description of the Current Conditions at the Facility. This Description shall be consistent with the RFI Scope of Work contained in Attachment A. Attachment A to this Consent Order is incorporated by reference as if fully set forth herein.

3. Within 90 calendar days of the effective date of this Consent Order, Respondent shall submit to EPA for approval a Pre-Investigation Evaluation of Corrective Measure Technologies. This Evaluation shall be performed in a manner consistent with the RFI Scope of Work contained in Attachment A.

4. Within 21 calendar days of receipt of EPA's comments on the Description of the Current Conditions at the Facility and Pre-Investigation Evaluation of Corrective Measure Technologies, Respondent shall submit to EPA for approval a revised Description and Pre-Investigation Evaluation which responds to and/or remedies any deficiencies identified by EPA.

5. Within 90 calendar days of the effective date of this Consent Order, Respondent shall submit to EPA an RFI Workplan for a RCRA Facility Investigation ("RFI Workplan"). The RFI Workplan shall be developed in accordance with, at a minimum, RCRA, its implementing regulations, and relevant EPA guidance documents. The RFI Workplan is subject to approval by EPA and shall be performed in a manner consistent with the RFI Scope of Work contained in Attachment A.

6. The RFI Workplan shall be designed to define the presence, magnitude, extent, direction, and rate of movement of any hazardous wastes or hazardous constituents within and beyond the Facility boundary. The RFI Workplan shall document the procedures the Respondent uses to conduct these investigations to: (1) characterize the potential pathways of contaminant migration; (2) characterize the source(s) of contamination; (3) define the degree and extent of contamination; (4) identify actual or potential receptors; and (5) support the development of alternatives from which a corrective measure will be selected by EPA. A specific schedule for implementation of all activities shall be included in the RFI Workplan.

7. In accordance with the provisions of Attachment A herein, the RFI Workplan shall include: (1) a Project Management Plan; (2) a Data Collection Quality Assurance Plan; (3) a Data Management Plan; (4) a Health and Safety Plan; and (5) a Community Relations Plan.

8. Within 21 calendar days of receipt of EPA's comments on the RFI Workplan, Respondent shall submit to EPA for approval a revised RFI Workplan which responds to and/or remedies any deficiencies identified by EPA.

9. In accordance with the schedule in the approved RFI Workplan, Respondent shall complete implementation of the RFI Workplan and submit a Draft RFI Report to EPA for review. The Draft RFI Report shall be consistent with the RFI Scope of Work contained in Attachment A.

10. Within 60 calendar days of the date Respondent receives EPA's comments on the Draft RFI Report, Respondent shall submit for EPA approval a Final RFI Report that responds to and/or remedies all of EPA's comments on the Draft RFI Report. The EPA approved Final RFI Report shall be deemed incorporated into and part of this Consent Order.

### CORRECTIVE MEASURES STUDY (CMS)

11. Within 90 calendar days after receipt of EPA approval of the Final RFI Report, Respondent must submit to EPA for approval a Draft CMS Report. The Draft CMS Report shall be prepared in accordance with the CMS Scope of Work in Attachment B.

12. Within 30 calendar days after receipt of EPA's comments on the Draft CMS Report, Respondent shall submit for EPA approval a Final CMS Report that responds to and/or remedies all of EPA's comments on the Draft CMS Report. The Final CMS Report shall be prepared in accordance with the CMS Scope of Work in Attachment B.

### PUBLIC COMMENT AND PARTICIPATION

13. Upon approval by EPA of the Final CMS Report, EPA shall make both the RCRA Facility Investigation Final Report (or summary of report) and the Corrective Measure Study Final Report (or summary of report) and a summary of EPA's proposed corrective measure and EPA's justification for proposing selection of that corrective measure available to the public for review and comment for at least twenty-one (21) days.

14. Following the public review and comment period, EPA shall notify Respondent of the corrective measure selected by EPA. If the corrective measure recommended in the CMS Final Report is not the corrective measure selected by EPA after consideration of public comments, EPA shall inform Respondent in writing of the reasons for such decision and the Respondent shall modify the RFI/CMS Final reports within 30 days as directed by EPA. Should Respondent disagree with the corrective measure chosen by EPA, the dispute shall be subject to the dispute resolution clause contained herein.

### CORRECTIVE MEASURES IMPLEMENTATION (CMI)

15. If Respondent has complied with the terms of this Consent Order, EPA shall provide a forty-five (45) calendar day period for negotiation of an administrative order on consent (or a judicial consent decree) for implementation of the selected corrective measure. The 45 calendar day negotiation period shall begin on the date Respondent receives EPA's notification of the selected final corrective measure. If agreement is not reached during this period, EPA reserves all rights it has to implement the corrective measure or other remedial response and to take any other appropriate actions under RCRA, CERCLA, or any other available legal authority, including issuance of an unilateral administrative order directing Respondent to implement the final corrective measure.

SUBMISSIONS/EPA APPROVAL/ADDITIONAL WORK

16. Within 14 calendar days of approval or modification by EPA of any Workplan or Program Plan, Respondent shall commence work and implement the tasks required by the Workplans or Program Plan submitted pursuant to the Scopes of Work contained in Attachments A and B, in accordance with the standards, specifications, and schedule stated in the Workplans or Program Plan as approved or modified by EPA.

17. Beginning with the second month following the effective date of this Consent Order and continuing throughout the period this Order is in effect, Respondent shall provide EPA with bi-monthly progress reports which shall be submitted by the tenth day of every other month. The progress reports shall conform to the requirements in the relevant Scopes of Work contained in Attachments A and B.

18. Respondent shall provide draft and final reports to EPA in accordance with the schedule contained in this Consent Order.

19. EPA will review all draft or final plans, reports, and other submissions, and notify Respondent in writing of EPA's approval/disapproval or modification thereof. In the event of any disapproval, EPA shall specify in writing the deficiencies and reasons for such disapproval. Within the specified period of receipt of EPA's disapproval, Respondent shall amend and submit to EPA for approval a revised plan, report, or other submission which responds to and/or remedies the deficiencies. EPA approved reports, plans, or other submissions shall be deemed incorporated into and part of this Consent Order.

20. Four copies of all documents, including Workplan(s), Program Plan(s), preliminary and final reports, progress reports, and other correspondence to be submitted pursuant to this Consent Order shall be hand delivered or sent by certified mail, return receipt requested, to the Project Coordinator designated pursuant to Section XII of this Consent Order.

21. All work performed pursuant to this Consent Order shall be under the direction and supervision of a professional engineer or geologist with expertise in hazardous waste site cleanup. On or before the effective date of this Consent Order, Respondent shall notify EPA in writing of the name, title, and qualifications of the engineer or geologist, and of any contractors or subcontractors and their personnel to be used in carrying out the terms of this Consent Order.

22. EPA may determine that certain tasks, including, but not limited to, investigatory work or engineering evaluation, are necessary in addition to the tasks and deliverables included in the IM and RFI Workplan. EPA shall request in writing that Respondent perform the additional work and shall specify the basis and reasons for EPA's determination that the additional work is necessary. Within 21 calendar days after the receipt of such request, Respondent shall have the opportunity to meet with EPA to discuss the additional work EPA has requested. Thereafter, Respondent shall perform the additional work EPA has requested according to an EPA-approved Workplan. All additional work performed by Respondent under this paragraph shall be performed in a manner consistent with this Consent Order. Any disagreement concerning the need for additional work shall be resolved in accordance with the dispute resolution clause contained herein.

#### VII. QUALITY ASSURANCE

Throughout all sample collection and analysis activities, Respondent shall use EPA-approved quality assurance (QA), quality control (QC), and chain-of-custody procedures as specified in the approved Workplans, Program Plans, and Scope(s) of Work. In addition, Respondent shall:

1. Ensure that laboratories used by Respondent for analyses perform such analyses according to the EPA methods included in "Test Methods for Evaluating Solid Waste (SW-846, November 1986) or other methods deemed satisfactory to EPA. If methods other than EPA methods are to be used, Respondent shall submit all protocols to be used for analyses to EPA for approval at least 30 calendar days prior to the commencement of analyses.

2. Ensure that laboratories used by Respondent for analyses participate in a quality assurance/quality control program equivalent to that which is followed by EPA. As part of such a program, and upon request by EPA, such laboratories shall perform analyses of samples provided by EPA to demonstrate the quality of the analytical data.

#### VIII. PUBLIC REVIEW OF ADMINISTRATIVE RECORD

1. The Administrative Record supporting the issuance of this Consent Order will be available for public review at EPA Region III's office from 9:00 AM to 5:00 PM. Anyone interested in reviewing the Administrative Record may contact:

Humane Zia (3HW11)  
U.S. Environmental Protection Agency  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107  
-(215) 597-8214

IX. ON-SITE AND OFF-SITE ACCESS

1. After 24 hours notification to Respondent, EPA and/or any EPA representative are authorized to enter and freely move about all areas of investigation at the Facility during the effective dates of this Consent Order for purposes of, inter alia: interviewing Facility personnel who are responsible for carrying out the terms of this Consent Order and contractors; inspecting records, operating logs, and contracts related to the Facility; reviewing the progress of Respondent in carrying out the terms of this Consent Order; conducting such tests, sampling or monitoring as EPA or its Project Coordinator deem necessary; using a camera, sound recording, or other documentary type equipment; and verifying the reports and data submitted to EPA by Respondent. Respondent shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, that pertain to work undertaken pursuant to this Consent Order. EPA and/or its authorized representatives shall comply with all approved health and safety plans.

2. To the extent that work required by this Consent Order, or by any approved Scope(s) of Work, Program Plan, or Workplan prepared pursuant hereto, must be done on property not owned or controlled by Respondent, Respondent shall use its best efforts to obtain site access agreements from the present owner(s) of such property within 14 calendar days of approval of any Scope of Work or Workplan pursuant to this Order for which site access is required. Best efforts as used in this paragraph shall include, at a minimum, but shall not be limited to a certified letter from Respondent to the present owners of such property requesting access agreements to permit Respondent and EPA and their authorized representatives to access such property. In the event that agreements for access are not obtained within 21 calendar days after receipt of EPA approval of any Scope of Work or Workplan pursuant to this Consent Order which requires work on property which is not owned or controlled by Respondent, the Respondent shall notify EPA in writing within 7 calendar days thereafter regarding both the efforts undertaken to obtain access and its failure to obtain such agreements.

3. Nothing in this Consent Order limits or otherwise affects EPA's right of access and entry pursuant to applicable law, including but not limited to RCRA and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. ~~§~~ 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (CERCLA).

#### X. SAMPLING AND DATA/DOCUMENT AVAILABILITY

1. The Respondent shall submit to EPA the results of all sampling and/or tests or other data generated by, or on behalf of the Respondent, in accordance with the requirements of this Consent Order and its attachments.

2. Respondent shall notify EPA at least 5 working days before engaging in any field activities, such as well drilling, installation of equipment, or sampling. At the request of EPA, Respondent shall provide or allow EPA or its authorized representatives to take split or duplicate samples of all samples collected by Respondent pursuant to this Consent Order. Similarly, at the request of Respondent, EPA shall allow Respondent or its authorized representatives to take split or duplicate samples of all samples collected by EPA under this Consent Order. EPA will notify Respondent at least 14 calendar days before conducting any sampling under this Consent Order.

3. Respondent may assert a business confidentiality claim in the manner described in 40 C.F.R. § 2.203(b) covering all or part of any information submitted to EPA pursuant to this Consent Order. Any assertion of confidentiality shall be adequately substantiated by Respondent when the assertion is made in accordance with 40 C.F.R. § 2.204(e)(4). Information determined to be confidential by EPA shall be disclosed only to the extent permitted by 40 C.F.R. Part 2. If no such confidentiality claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to the Respondent. Respondent agrees not to assert any confidentiality claim with regard to any sampling, monitoring, physical, or analytical data.

#### XI. RECORD PRESERVATION

Respondent agrees that it shall preserve, during the pendency of this Consent Order and for a minimum of 6 years after its termination, all data, records and documents in its possession or in the possession of its divisions, officers, directors, employees, agents, contractors, successors and

assigns which relate in any way to this Consent Order or to hazardous waste management and/or disposal at the Facility. After 6 years, Respondent shall make such records available to EPA for inspection or shall provide copies of any such records to EPA. Respondent shall notify EPA at least 30 calendar days prior to the destruction of any such records, and shall provide EPA with the opportunity to take possession of any such records.

#### XII. PROJECT COORDINATOR

1. On or before the effective date of this Consent Order, EPA, and Respondent shall each designate a Project Coordinator. Respondent shall notify EPA in writing of the Project Coordinator it has selected. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Order. The EPA Project Coordinator will be EPA's primary designated representative at the Facility. All communications between Respondent and EPA, and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall to the maximum extent possible be directed through the Project Coordinators.

2. The parties agree to provide at least 7 calendar days written notice prior to changing Project Coordinators.

3. If EPA determines that activities in compliance or noncompliance with this Consent Order, have caused or may cause a release or threat of a release of hazardous waste, hazardous constituent, or a pollutant or contaminant that may present a threat to the public health, welfare or to the environment, EPA may order Respondent to stop further implementation of this Consent Order for such period of time as may be needed to abate any such release or threatened release and/or to undertake any action which EPA determines is necessary to protect human health, welfare or the environment.

4. The absence of the EPA Project Coordinator from the Facility shall not be cause for the stoppage of work.

#### XIII. NOTIFICATION

Unless otherwise specified, reports, correspondence, approvals, disapprovals, notices or other submissions relating to or required under this Consent Order shall be in writing and shall be sent to:

1. Four copies of all documents to be submitted to the U.S. EPA shall be sent to:

Humane Zia (3HW11)  
Environmental Engineer  
U.S. EPA, Region III  
841 Chestnut Building  
Philadelphia, PA 19107

2. One copy of all documents to be submitted to the PA DER shall be sent to:

Regional Solid Waste Manager  
PA DER Region II  
90 E. Union Street  
Wilkes-Barre, PA 18701

3. Documents to be submitted to the Respondent shall be sent to:

Steven Engelmyer, Esquire  
Ninth Floor  
1515 Market Street  
Philadelphia, PA 19102

and

Frank Murphy  
Dixon Wearever, Inc.  
Deer Lake, PA 17961-0280

#### XIV. DELAY IN PERFORMANCE/STIPULATED PENALTIES

1. Unless there has been a written modification of a compliance date by EPA, or excusable delay, as defined in Section XVI, below, "FORCE MAJEURE and EXCUSABLE DELAY," in the event Respondent fails to meet any requirement set forth in this Consent Order, Respondent shall pay stipulated penalties, as set forth below. Compliance by Respondent shall include commencement or completion of an activity under this Consent Order or a plan approved under this Consent Order or any matter under this Consent Order in an acceptable manner and within the specified time schedules in and approved under this Consent Order. If Respondent fails to submit to EPA by the date specified in this Order or any plan, report, or other submission approved pursuant hereto, an approvable draft plan, report, or

other submission required pursuant to this Order, Respondent shall pay stipulated penalties as set forth below. Such penalties shall begin to accrue on the day after the draft plan, report, or other submission is due and shall continue to accrue as set forth below in this Section (XIV). However, if Respondent submits to EPA within the period allowed therefor pursuant to this Consent Order an approvable revised plan, report, or other submission which responds to and/or remedies the deficiencies identified in the draft document, EPA will forego collection of the stipulated penalties which have accrued for failure to submit an approvable draft plan, report, or other submission by the specified deadline. In the event the revised plan, report, or other submission is not approved by EPA, Respondent shall be liable for stipulated penalties for both the failure to submit an approvable draft and revised plan, report or other submission as specified in this Order. Moreover, both EPA and Respondent reserve their rights to take action as specified in this Order in the event EPA disapproves a revised plan, report, or other submission. All "minor violations" shall be payable as set forth in paragraph 11(a) of this Section XIV. "Minor violations" shall be defined as:

- (a) Failure to submit a bimonthly progress report or sampling data by the specified due date;
- (b) Failure to notify EPA of a change in the designated Project Coordinator, as set forth in Section XII(2), above; and
- (c) Failure to give timely notice of any field activities, pursuant to Section X(2), above.

2. All "major violations" shall be payable as set forth in paragraph 11(b) of this Section XIV. "Major violations" shall be defined as:

- (a) Failure to submit the RFI Workplan by the specified due date;
- (b) Failure to submit the draft and final RFI Reports by the specified due dates; and
- (c) Failure to submit the draft and final CMS Reports by the specified due dates.

3. As a part of the RFI Workplan, Respondent must submit a schedule for undertaking field activities (e.g., installation of wells and sampling). These "internal schedules" shall indicate specific dates for the commencement and completion of work to be undertaken in accordance with the final

RFI Workplan ("interim milestones"). Should Respondent fail to meet an interim milestone, as indicated in the final RFI Workplan, but succeed in meeting the scheduled date for submission of a "major deliverable" (draft and final RFI and CMS Reports), EPA will waive any stipulated penalties which accrue as a result of Respondent's failure to meet interim milestones. However, should Respondent fail to meet an interim milestone and, as a result, fail to timely submit a major deliverable, Respondent shall not only be liable for stipulated penalties for the major violation, but shall also remain liable for stipulated penalties arising from Respondent's failure to meet the interim milestone. Specified penalties for failure to meet interim milestones shall be payable as set forth in paragraph 11(c) of this Section XIV.

4. If Respondent fails to abide by the record preservation requirements set forth in Section XI, above, Respondent shall be liable for a stipulated penalty of \$250 per document destroyed. If Respondent knowingly and/or willfully destroys records pursuant to this Consent Order, Respondent may be subject to criminal prosecution.

5. All penalties shall begin to accrue on the day after complete performance is due or a violation occurs, and shall continue to accrue through the final day or correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate and distinct violations of this Consent Order.

6. Following the EPA's determination that Respondent has failed to comply with any of the requirements of this Consent Order, EPA shall give Respondent written notification of same, describing the noncompliance. Said notice shall also indicate the amount of penalties due.

7. All penalties owed to EPA under this Section XIV shall be due within thirty (30) calendar days of receipt of the notification of noncompliance, unless Respondent invokes the dispute resolution procedures under Section XV, below. Interest shall begin to accrue on the unpaid balance at the end of the 30 day period at the prevailing Treasury rate. Penalties shall accrue from the date of violation regardless of whether EPA has notified Respondent of a violation. All penalties shall be made by certified or cashier's check payable to the Treasurer of the United States of America and shall be remitted to:

U.S. EPA -- Regional Hearing Clerk  
P. O. Box 360515M  
Pittsburgh, PA 15251

All payments shall reference the name of the Facility, the Respondent's name and address, and the EPA docket number of this action. Copies of the transmittal of payment shall be sent simultaneously to the EPA Project Coordinator and the Regional Hearing Clerk (3RC00), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA, 19107.

8. Respondent may dispute the EPA's right to the stated amount of penalties by invoking the dispute resolution procedures under Section XV, below. While a matter is under dispute stipulated penalties shall continue to accrue, if applicable, in accordance with this Section XIV. To the extent that Respondent does not prevail upon resolution of the dispute, Respondent shall remit to EPA any outstanding penalty payment, including any accrued interest, in the manner described in paragraph 5 of this Section XIV. To the extent Respondent prevails upon resolution of the dispute no penalties shall be payable for those penalties which were specifically resolved. Notwithstanding the above, upon resolution of a dispute EPA may, in its discretion, after consideration of the nature of the dispute, Respondent's assertions relative to the matter in dispute and any other relevant matter forego collection of all or a portion of the stipulated penalty.

9. Neither the filing of a petition to resolve a dispute nor the payment of penalties shall alter in any way Respondent's obligation to comply with requirements of this Consent Order.

10. If Respondent fails to pay stipulated penalties, the EPA may institute proceedings to collect the penalties. However, nothing in this section shall be construed as prohibiting, altering, or in any way limiting the ability of the EPA to seek any other remedies or sanctions which may be available to EPA by virtue of Respondent's failure to comply with any of the requirements of this Consent Order or of the statutes and regulations upon which it is based. However, EPA agrees not to pursue statutory penalties for any violation of the terms of this Consent Order which subjects Respondent to stipulated penalties and which violation continues for less than thirty (30) calendar days. In the event that EPA seeks to impose statutory penalties for violations which concurrently subject Respondent to stipulated penalties pursuant to this Section XIV, Respondent shall be entitled to an offset to the total amount of statutory penalties assessed by the total amount of stipulated penalties collected for such violations.

11(a) The following per diem stipulated penalties shall be payable per violation per day to EPA for any minor violation identified in paragraph 1 of this Section XIV:

<u>Amount/Day</u>	<u>Period of Noncompliance</u>
\$500	Day 1-7
\$1,000	Beyond Day 7

(b) The following per diem stipulated penalties shall be payable per violation per day to EPA for any major violation identified in paragraph 2 of this Section XIV:

<u>Amount/Day</u>	<u>Period of Noncompliance</u>
\$1,000	Day 1-7
\$3,000	Day 8-14
\$5,000	Beyond Day 14

(c) The following per diem stipulated penalties shall be payable per violation per day to EPA for any failure to meet interim milestones as described in paragraph 3 of this Section XIV:

<u>Amount/Day</u>	<u>Period of Noncompliance</u>
\$750	Day 1-7
\$1500	Beyond Day 7

#### XV. DISPUTE RESOLUTION

1. If Respondent disagrees, in whole or in part, with any EPA disapproval or modification or other decision or directive made by EPA pursuant to this Consent Order, Respondent shall notify EPA in writing of its objections and the basis therefor within 14 calendar days of receipt of EPA's disapproval, decision or directive. Said notice shall set forth the specific points of the dispute, the position which Respondent maintains should be adopted as consistent with the requirements of this Consent Order, the basis for Respondent's position, and any matters which it considers necessary for EPA's determination. In the event that resolution is not reached within 15 days of EPA's receipt of such written exception, Respondent shall modify the plan as required by EPA. Thereafter, Respondent may pursue whatever remedies it may have under the law.

2. The existence of a dispute as defined herein, and EPA's consideration of such matters placed into dispute shall not excuse, toll or suspend any compliance obligation

or deadline required pursuant to this Consent Order during the pendency of the dispute resolution process.

3. Notwithstanding any other provisions of this Consent Order, no action or decision by EPA, including without limitation decisions of the Regional Administrator, Region III, pursuant to this Consent Order, shall constitute final agency action giving rise to any rights to judicial review prior to EPA's initiation of judicial action to compel Respondent's compliance with the mandates of this Order, including but not limited to the collection of stipulated penalties as set forth herein.

#### XVI. FORCE MAJEURE AND EXCUSABLE DELAY

1. Respondent shall perform the requirements of this Consent Order within the time limits set forth herein, unless the performance is prevented or delayed by events which constitute a force majeure. Respondent shall have the burden of proving such a force majeure. A force majeure is defined as any event arising from causes not reasonably foreseeable and beyond the reasonable control of Respondent which could not be overcome by due diligence and which delays or prevents performance by a date required by this Consent Order. Such events do not include increased costs of performance, changed economic circumstances, or failure to obtain Federal, State, or local permits.

2. Respondent shall notify EPA in writing within 7 calendar days after it becomes aware of events which Respondent claims constitutes a force majeure. Such notice shall estimate the anticipated length of delay, including necessary demobilization and remobilization, its cause, measures taken or to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Respondent shall undertake all reasonable actions to prevent or minimize the delay. Failure to comply with the notice provision of this section shall constitute a waiver of Respondent's right to assert a force majeure.

3. If EPA determines that the delay has been or will be caused by circumstances not reasonably foreseeable and beyond Respondent's control, which could not have been overcome by due diligence, the time for performance for that element of the relevant Program Plan, Scope(s) of Work or Work Plan may be extended, upon EPA approval, for a period equal to the delay resulting from such circumstances. This shall be accomplished through an amendment to this Consent Order pursuant to Section XXI. Such an extension does not alter the schedule for performance or completion of other tasks required by any Program

Plan, Scope of Work, or Work Plan unless these are also specifically altered by amendment of the Consent Order. In the event that EPA and Respondent cannot agree that any delay or failure has been or will be caused by circumstances not reasonably foreseeable and beyond the control of Respondent, which could not have been overcome by due diligence, or if there is no agreement on the length of the extension, the dispute shall be resolved in accordance with the Dispute Resolution provisions of Section XV of this Consent Order.

#### XVII. RESERVATION OF RIGHTS

1. EPA expressly reserves all rights and defenses that it may have, including the right both to disapprove of work performed by Respondent pursuant to this Order and to request that Respondent perform tasks in addition to those stated in the Work Plan, Scope(s) of Work, and Program Plan.

Respondent reserves all rights not specifically waived herein, including but not limited to the right to contest any such action by EPA pursuant to the dispute resolution clause contained herein or in any judicial action brought by EPA.

2. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this Consent Order, including without limitation the assessment of penalties under § 3008(h)(2) of RCRA, 42 U.S.C. 6928(h)(2). This Consent Order shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, or any other statutory, regulatory, or common law enforcement authority of the United States.

3. Compliance by Respondent with the terms of this Consent Order shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, State, or Federal laws and regulations.

4. The signing of this Consent Order and Respondent's consent to comply shall not limit or otherwise preclude the EPA from taking additional enforcement action pursuant to § 3008(h) of RCRA should the EPA determine that such actions are warranted.

5. This Consent Order is not intended to be nor shall it be construed as a permit. This Consent Order does not relieve Respondent of any obligation to obtain and comply with any local, State, or Federal permits.

6. EPA reserves the right to perform any portion of the work consented to herein or any additional site characterization, feasibility study, and response/corrective actions as it deems necessary to protect public health and the environment. EPA may exercise its authority under CERCLA to undertake removal actions or remedial actions at any time. In any event, EPA reserves its right to seek reimbursement from Respondent for such costs incurred by the United States. Notwithstanding compliance with the terms of this Consent Order, Respondent is not released from liability, if any, for the costs of any response actions taken by EPA.

#### XVIII. OTHER CLAIMS

Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

#### XIX. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, State, and Federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

#### XX. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

Respondent agrees to indemnify and save and hold harmless the United States Government, its agencies, departments, agents, and employees, from any and all claims or causes of action arising from or on account of acts or omissions of Respondent or its agents, independent contractors, receivers, trustees, and assigns in carrying out activities required by this Consent Order. This indemnification shall not be construed in any way as affecting or limiting the rights or obligations of Respondent or the United States under their various contracts.

### XXI. SUBSEQUENT MODIFICATION

1. This Consent Order may be amended by mutual agreement of EPA and Respondent. Such amendments shall be in writing, shall be signed by both parties, shall have as their effective date the date on which Respondent receives a fully executed modification signed by both EPA and Respondent, and shall be incorporated into this Consent Order.

2. Any reports, plans, specifications, schedules, and attachments required by this Consent Order are, upon written approval by EPA, incorporated into this Consent Order. Any noncompliance with such EPA-approved reports, plans, specifications, schedules, and attachments shall be considered a violation of this Consent Order and shall subject Respondent to the stipulated penalty provisions included in Section XIV of this Consent Order.

3. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondent will be construed as relieving Respondent of its obligation to obtain written approval, if and when required by this Consent Order.

### XXII. SEVERABILITY

If any provision or authority of this Consent Order or the application of this Consent Order to any party or circumstance is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances shall not be affected thereby and the remainder of the Consent Order shall remain in force.

### XXIII. TERMINATION AND SATISFACTION

The provisions of this Consent Order shall be deemed satisfied upon Respondent's receipt of written notice from EPA that Respondent has demonstrated, to the satisfaction of EPA, that the terms of this Consent Order, including any additional tasks determined by EPA to be required pursuant to this Consent Order, have been satisfactorily completed. This notice shall not, however, terminate Respondent's obligation to comply with Sections XI (Record Preservation), XVII (Reservation of Rights), and XIX (Other Applicable Laws).

XXIV. EFFECTIVE DATE

The effective date of this Consent Order shall be the date on which Respondent receives a fully executed Consent Order signed by both EPA and Respondent. Because this Order was entered with the consent of both parties, Respondent waives its right to request a public hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b).

IT IS SO AGREED AND ORDERED:

DATE: 9/19/88

BY: Donald E. Williams  
Dixon Wearever, Inc.  
(Name) Donald E Williams  
(Title) Manufacturing Vice President - Consumer  
- Products - USH

DATE: 9-29-88

BY: James M. Seif  
REGIONAL ADMINISTRATOR  
UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION III